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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 5292 OF 1991

1. Smt Manoramabai Baburao Pawar .. Petitioners
& ors.

VS

Smt Anjlina Jitendrakumar Baphana .. Respondent
Mr.M.D.Angal for Petitioners
Mr.G.S.Godbole for Respondent

CORAM : D.G.KARNIK, J

DATE: 11TH AUGUST, 2004.

P.C.

1. By this petition, the petitioners who are the tenants challenge the judgment and order dated 20th September, 1991 passed by the learned VIth Additional District Judge, Nasik dismissing Civil Appeal NO.44 of 1989 and thereby confirming the judgment and decree dated 30th November, 1988 for possession passed by the IIIrd Joint Civil Judge, Junior Division, Nasik in Regular Civil Suit No. 520 of 1982.

2. The petitioners are the heirs of late Baburao Pawar who was the original tenant of the suit premises consisting of two rooms out of the house property bearing Municipal No. 480 (part) City Survey No.6925 and 6926 situated at Nasik. The property originally belonged to Mrs S.S.Paul who had let out three rooms to Baburao on a monthly rent of Rs.10.80. Mrs Paul filed a suit bearing Regular Civil Suit No. 758 of 1970 against Baburao in which a partial decree for possession of one room was passed in appeal and it was ordered that the rent would be reduced proportionately. In pursuance of the said decree, Baburao surrendered the possession of one room to Mrs Paul and the rent was therefore reduced to Rs.7.80 p.m. On 10th April 1981 the present respondent purchased the property from Mrs Paul and the petitioners became the tenants of the respondents.

3. On 16th March, 1982 the respondents sent a notice to the petitioner no. 1 demanding arrears of rent from 10th April, 1981 i.e. from the date of his purchase. As the petitioner no.1 failed and neglected to pay the rent, the respondent filed a suit bearing Regular Civil Suit No. 520 of 1982 in the Court of the Civil Judge, Junior Division, Nasik claiming possession on the ground of default in payment of rent as well as reasonable and bonafide requirement. By its judgment and order dated 30th November, 1988 the trial Court decreed the suit on both the grounds. The aggrieved petitioner filed an appeal in the District Court. The District Court reversed the finding on the issue of reasonable and bonafide requirement but confirmed the decree for possession on the ground of default in payment of rent. That judgment is impugned in this writ petition.

4. In the notice of demand, dated 16th March, 1982 the respondent has stated that he had purchased the

property on 10th April, 1981 and therefore he was entitled to recover rent from 10th April, 1981. In the plaint also, the respondent has stated that the rent up to 9th April, 1981 has been paid to the

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previous landlord and that the respondent is entitled to recover rent from 10th April, 1981. This was clearly in accordance with the provisions of section 55 of the Transfer of Property Act under which a seller of the property is entitled to recover rent up to the date of sale. In the notice dated 16th March, 1982 the respondent demanded arrears of rent from 10th April, 1981. The envelope in which notice was sent was returned undelivered by the post office which is at Exhibit 59. However, in his examination in chief, the petitioner has admitted that he received the notice. Perhaps the notice might have been sent simultaneously by ordinary post or delivered personally to the petitioner. As the fact of receipt of the notice is admitted in the examination in chief itself, the respondent was not required to prove the service of notice of demand. Within one month of the receipt of notice, the petitioners have not sent the arrears of rent as demanded in the notice. Learned counsel for the petitioners however, submits that even prior to the notice rent was sent by money orders on 18th July, 1981, 7th August, 1981, 7th September, 1981, 2nd February 1982 and 7th August, 1982. All the aforesaid money orders were refused by the respondent. Learned counsel therefore submits that the petitioners were ready and willing to pay rent and the respondent had illegally refused the money order and therefore the petitioners cannot be branded as defaulters. A perusal of the money order coupon shows that in all the money orders rent was sent from 13th April, 1981. It is an admitted position that the rent was due from 10th April, 1981. Therefore, the petitioner had not sent the rent for a period of 3 days viz 10th, 11th and 12th April, 1981 in any of the money orders. A message was written on each of the money orders that rent from 13th April, 1981 was sent. As the money orders did not cover the rent for the entire period for which the rent was due, the respondent was entitled to decline to accept the money orders. By sending the money orders of shorter duration, the petitioner cannot contend that he had tendered the rent due. The rent which was due and was not tendered. Therefore, the despatch of money orders prior to the suit notice would not be of any assistance to the petitioners. As the petitioners did not send the arrears of rent within one of the date of notice, a decree for possession had to follow under section 12 (3) (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short the Act).

5. The trial Court as well as the appellate Court have concurrently held that the case was covered under clause (a) of sub-section 3 of section 12 of the Act. Both the Courts have held that the petitioners had not sent the rent within one month of the receipt of the notice of demand. The said findings is obviously

correct.

6. Hence, there is no merit in the petition which is hereby dismissed. Rule discharged. No costs.

7. Learned counsel for the petitioners prays for sometime to vacate the premises. Learned counsel for the respondent has no objection for granting a .3.

reasonable time to vacate. In the circumstances, the petitioners are granted one year's time to vacate the suit premises subject to their filing an undertaking in the usual form within a period of four weeks and subject to their paying or depositing in the trial court arrears of rent and continuing to pay or deposit the amount equal to the rent till delivery of the possession.

D.G.KARNIK, J

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